

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0244
Sales and Use Tax
For the Years 1998-2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax-Computation

Authority: IC 6-8.1-5-1 (b),

The taxpayer protests the computation of sales tax due.

II. Tax Administration-Penalty

Authority: IC 6-8.1-10-3, 6-8.1-10-3.

The taxpayer protests the imposition of the twenty percent (20%) penalty.

III. Tax Administration-Interest

Authority: IC 6-8.1-10-1(a),(e).

The taxpayer protests the imposition of interest.

STATEMENT OF FACTS

The taxpayer is a corporation that operated a pharmacy in Indiana. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales tax, interest, and penalty for the years 1998-2001. The taxpayer protested the imposition of sales tax, penalty, and interest. A hearing was held. This Letter of Findings results.

I. Sales and Use Tax-Calculation

DISCUSSION

The sales tax due was calculated from the best information available. The auditor applied percentages determined from a research guide to the taxpayer's gross sales to calculate the sales tax due. The taxpayer protests this assessment of sales tax.

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

The taxpayer contends that it was not necessary to reconstruct the tax in this manner since it provided adequate records. The taxpayer did provide some books and records to the auditor. These records produced, however, were for a related business. Later the taxpayer provided the department with certain books and records. There were twelve (12) boxes of books and records that were not organized in any discernable fashion. The documents provided were not in a consistent form or verifiable. The register sales tapes were loose and could not be matched to any other records. The daily records of sales did not match the monthly totals of sales. The monthly totals of sales did not tie in appropriately to the annual sales records as asserted by the taxpayer. There were no exemption certificates, verifiable actual ledgers, or verifiable journals. There was no way to tie together the information provided by the taxpayer and use it to reconstruct the taxpayer's sales tax returns.

FINDING

The taxpayer's protest is denied.

II. Tax Administration-Penalty

DISCUSSION

The taxpayer protests the imposition of the twenty percent (20%) penalty pursuant to IC 6-8.1-10-3 as follows:

- (a) If a person fails to file a return on or before the due date . . . the department may prepare a return for him, based on the best information available to the department. The department prepared return is prima facie correct.
- (b) If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20%) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.

The taxpayer contends that it made at least seven payments during the audit period. The department is unable to find any evidence that it ever received the returns and accompanying payments. The taxpayer also contends that it filed an amount due in its bankruptcy filing. That is not, however, the periodic filing required by the statute.

The taxpayer did not file sales and use tax returns as required. The state auditor prepared the taxpayer's sales tax returns. Under these circumstances, the twenty percent (20%) penalty is appropriate.

FINDING

The taxpayer's protest is denied.

III. Tax Administration-Interest

DISCUSSION

The taxpayer protests the imposition of interest pursuant to IC 6-8.1-10-1(a) as follows:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

The taxpayer did not pay the full amount of tax due. Therefore, interest was properly imposed. IC 6-8.1-10-1(e) goes on to state that “the department may not waive the interest imposed under this statute.” Clearly, the department does not have the authority to grant the taxpayer’s request for waiver of interest.

FINDING

The taxpayer’s protest is denied.

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